No. 95-409 (6)

Supreme Court, U.S.
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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1995

PROMETHEUS FUNDING CORP., etc., et al.,
Petitioners,
VS.
MERCHANTS HOME DELIVERY SERVICES, INC.,
Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Since the filing of the petition for certiorari, the Court of Appeals for the Sixth Circuit has decided *Kenty v. Bank One, Columbus, N.A.*, No. 93-4211, 1995 WL 621782 (6th Cir. Oct. 25, 1995), which squarely addresses the scope of preemption under the McCarran-Ferguson Act (15 U.S.C. § 1011 et seq.). *Kenty* follows the preemption analysis set forth in a line of cases exemplified by *Ambrose v. Blue Cross & Blue Shield of VA, Inc.*, 891 F. Supp. 1153 (E.D. Va. 1995), *Forsyth v. Humana, Inc.*, 827 F. Supp. 1498 (D.Nev. 1993), and *LeDuc v. Kentucky Cent. Life Ins. Co.*, 814 F. Supp. 820 (N.D. Cal. 1992). Consistent with this line of authority, *Kenty* holds that McCarran-Ferguson precludes application of the federal Racketeer Influenced and Corrupt

Organizations Act (RICO) to an insurance company engaged in the business of insurance.

As petitioners have demonstrated, the Ninth Circuit Court of Appeals here rejected the analytical approach of this same line of cases in favor of the sharply different preemption analysis contained in *NAACP v. American Family Mutual Ins. Co.*, 978 F.2d 287 (7th Cir. 1992), *cert. denied*, 113 S.Ct. 2335 (1993). (See Petn. for Cert. at pp. 12-13, 14-20)

Simply put, *Kenty* creates a conflict among the circuits over the scope of McCarran-Ferguson preemption. This conflict, together with the other reasons set forth in the petition for certiorari, justify this Court's intervention and review of the Ninth Circuit's opinion.

DATED: November 1, 1995.

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